

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
MEETING MINUTES OF
MARCH 22, 1999**

AS REVISED AT MAY 20-21, 1999 MEETING

1. General

A. Call to Order and Roll Call. The Board of Public Accountancy was called to order at 8:30 a.m. on March 22, 1999, with Chair Kathleen Smith presiding. The meeting was held at the office of the Board at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.

The roll was called with the following members present: Kathleen Smith, Nina Kavich, William Gaines, George Klein, Dean Graf, Richard Hoiekvam, Luke Aldy and David Hunter. Also present were staff members Annette Harmon and Mary Shonerd. Visitor Dan Vodvarka was present during a portion of the meeting.

B. Approval of meeting agenda for the March 22, 1999 Board Meeting. Moved by Aldy, seconded by Graf, that the Board adopt the agenda as amended to include the deletion of item 4 and the change of item 6.C to 8.D. On roll call vote, all members present voted aye. Motion number 1 carried.

C. Approval of minutes of the January 7-8, 1999 Board meeting. Moved by Kavich, seconded by Klein, to approve the meeting minutes as written for January 7-8, 1999. On roll call vote, all members present voted aye. Motion number 2 carried.

D. Public Comment Period. No members of the public were present.

2. Consent Agenda

Approval of March 22, 1999 Consent Agenda. Moved by Klein, seconded by Graf, to approve the Consent Agenda. On roll call vote, all members present voted aye. Motion number 3 carried.

A. Published Notice of Meeting. Pursuant to call and published notice, the notice of meeting is herewith attached.

B. Review of Board Budget Status Report. The Board reviewed the February 28, 1999 Budget Status Report.

C. Approval of December, 1998 and January and February, 1999 disbursements. The Board reviewed and approved the December 1998; January and February, 1999 disbursements.

D. Request for Acceptance of Voluntarily Surrendered CPA Certificates. The Board accepted the requests of Lance Grothe and M. Sabry Heakal to voluntarily surrender their Nebraska CPA certificates.

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E. Licensure Report. The Board reviewed a report on permits and registrations issued as of March 4, 1999. Prior year's statistics were also reviewed for comparison.

3. Continuing Education Committee

A. Ratification of staff program evaluations since last meeting. Moved by Gaines, with the Committee's recommendation, to approve the recommendations of administrative personnel for courses requesting continuing education credit. On roll call vote, all members present voted aye. Motion number 4 carried.

B. Report on Deficiencies for Renewal 7/1/99. The Board reviewed a listing of licensees that have deficient CPE hours for 1998.

5. Formal Hearing on Complaint #98-09: Lee A. Johnson

A hearing was held at 9:00 a.m. on March 22, 1999 for the alleged violations of 1-137(4) Violation of a rule of professional conduct including Chapter 5, Sections 005.02(C) and (D), 007.001, 007.05 and 007.06 of a CPA certificate holder. Representing the Board of Accountancy was Robert Gritmit from Baylor, Evnen, Curtiss, Gritmit & Witt. Kent Radke acted as Hearing Officer. The respondent Lee A. Johnson was present but was not represented by legal counsel. Board members present and participating on this matter were Kathleen Smith, Nina Kavich, William Gaines, Richard Hoiekvam, Dean Graf, George Klein, Luke Aldy and David Hunter.

Closed Meeting

Closed Meeting. Moved by Klein, seconded by Aldy, that the Board go into closed session at 10:49 a.m. to discuss enforcement issues. On roll call vote, all members present voted aye. Motion number 5 carried.

Return to Open Meeting. Moved by Klein, seconded by Kavich, that the Board return to open session at 12:30 p.m. On roll call vote, all members present voted aye. Motion number 6 carried.

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6. Enforcement of Professional Conduct Committee

A. Complaint Consent Agenda. Moved by Klein, with the Committee's recommendation, to approve the Complaint Consent Agenda. On roll call vote, all members present voted aye. Motion number 7 carried.

- 1) Complaint Status Log. The Board reviewed a "log" of complaints received, action taken, monitoring status, etc. No action necessary.

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- 2) 99-01 Allegation of Money Laundering Operation. The IRS is investigating this case. Motion to monitor the complaint until such time as the IRS has completed its investigation.
- 3) 99-02 Withholding Client Records. The CPA has forwarded copies of the client's records and the client has not indicated that anything further is needed. Motion to close the complaint.

5. Formal Hearing on Complaint #98-09: Lee A. Johnson.

Moved by Klein, seconded by Hunter, that the Board direct hearing officer Kent Radke to furnish the Board with findings of fact and conclusions of law regarding this matter. On roll call vote, all members present voted aye. Motion number 8 carried.

6. Enforcement of Professional Conduct Committee

B. 97-27 Les Wilhelm. On November 6, 1998 the Board held a formal disciplinary hearing against Les Wilhelm and found the allegations to be true. Chair Kathleen Smith signed an order against Les Wilhelm. To date Mr. Wilhelm is not in compliance with all the conditions of that order. Moved by Klein, with the Committee's recommendation, that the Board file a formal complaint and notice of Hearing against Les Wilhelm for 1) violating the decision of the Board dated November 23, 1998 by not paying the assessed costs of \$836 within sixty days and by not complying with all the provisions of the Rules of the Board; and 2) for violations of Section 1-137(4) of the Law; Chapter 5, Sections 007.01 and 007.05; Chapter 4, Section 006.07(a); and Chapter 8, Sections 007.03 and 008 of the Rules. On roll call vote, all members present voted aye. Motion number 9 carried.

C. 99-03 Request for Reinstatement of Active Permit; Referral from Board's Examination & Licensing Committee. This item was moved to agenda item 8.D.

D. 99-04 Withholding of Client Records by Attorney/CPA Certificate Holder. An attorney/CPA Certificate holder (no experience) was representing the complainant before the IRS in court. He was then asked to file returns and delayed in getting them done. The delinquent returns were given to a CPA/CPA firm to complete and records were asked for. Attorney/CPA Certificate holder says he was not paid and he has asserted an attorney lien pursuant to Nebraska Revised Statutes, Section 7-108. Moved by Klein, with the Committee's recommendation, that the complainant provide the Board with a list of accounting records subsequent to 1995 that are needed for the preparation of the 1996 and 1997 returns; advise the certificate holder that he is required to comply with the Board rules and return the accounting records pertaining to the periods for which he did not prepare tax returns as an attorney. Respondent must reply within 10 days of the receipt of the certified letter. On roll call vote, all members present voted aye. Motion number 10 carried.

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E. 99-05 Holding out as a CPA by unlicensed individual. A collection agency contacted the Board indicating that an individual was representing himself as a CPA. The individual has a bicycle business in Omaha, as well as a bookkeeping/accounting business. The Board will continue to monitor.

F. 99-06 Certificate holder issuing compilation statement with budget report for political subdivision while Inactive. The Auditor of Public Accounts notified the Board of an individual that issued a compilation report with a political subdivision's budget while he was registered as Inactive. Moved by Klein, seconded by the Committee, that the Board inform the individual that he cannot use SSARS language while an Inactive Registrant. He must have an active permit to do so. On roll call vote, all members present voted aye. Motion number 11 carried.

Moved by Klein, seconded by Aldy, that the QEP Committee obtain the language referred to by the State Auditor's office and publish such language in the Board's next issue of the newsletter. On roll call vote, all members present voted aye. Motion number 12 carried.

G. 98-17 Improper Use of CPA Designation by Limited Liability Company. At the Board's January 7-8, 1999 meeting it was moved to request an Attorney General's opinion as to whether the LLC's name is in violation of Board law and Rules. After review of a news article in the Omaha World Herald, it was determined no further action was needed.

H. 98-05 Violation of Standards in Performance of Audit. The Board recruited a practitioner to review discrepancies noted from the State Auditor on audit work papers by the practitioner. At the Board's January 7-8, 1999 meeting the Board moved to enter into a consent order with the practitioner agreeing that he will not perform any more audits in any practice form, that he will obtain 16 hours of CPE by December 31, 1999 in the areas of compilations and reviews and financial statement disclosures in addition to the normal education requirement; and that he will reimburse the Board for the costs incurred from the outside reviews. If the consent order were violated, he would be subject to disciplinary action. The practitioner has signed and accepted the Consent Order. No further action necessary.

I. 98-06 Violation of Standards in Performance of Audit. The Board recruited several practitioners to review discrepancies noted from the State Auditor on audit work papers by the firm. At the Board's January 7-8, 1999 meeting the Board moved to request a review of the audit workpapers. If the results of the workpaper review proved to be unsatisfactory, the firm would be scheduled for an informal hearing. Moved by Klein, with the Committee's recommendation, that the Board schedule an informal hearing for May 20-21, 1999 in which to discuss the reviewer's comments. On roll call vote, all members present voted aye, except member Hunter who voted nay. Motion number 13 carried.

J. Request for Declaratory Order. The Board reviewed a request for a declaratory order from KPMG Peat Marwick LLP on a proposed name modification. At the Board's January 7-8, 1999 meeting the Board moved to inform the firm that the Board will issue a declaratory order at a specified time, which was upon receipt and review of an Attorney General's opinion on the

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matter. There was no presumption that the name modification would either be acceptable or unacceptable. Moved by Klein, seconded by Kavich, to issue a Declaratory Order that the Board does not feel the use of KPMG alone would be fictitious because there is not an apparent intent to mislead or deceive the public. On roll call vote, all members present voted aye. Motion number 14 carried.

7. Executive Reports

A. Report from Executive Director .

Biennium Budget Process. After the agency's budget was submitted in September, both the Budget Division and the Legislative Fiscal Office reviewed it and made recommendations for the final State Budget. Both had eliminated the additional funding requested for Personal Services Limitation (PSL) and travel. The Executive Director testified on behalf of the Board at the February 24, 1999 Appropriations Committee hearing, emphasizing the need for full funding of the PSL request including up to a 5% increase in the amount of the Executive Director's salary and the need for travel in order for the Board to carry out its mission of protecting the public interest. Three staff positions were fully budgeted for, using the vacancy savings from the prior and current years. This included a Staff Assistant I, an Administrative Assistant I and the reclassification of the Office Clerk III to an Administrative Assistant II.

At nearly every meeting for the last year, the Executive Director has discussed with the Board the reclassification of the position from a clerical to an Administrative position, that job duties would be realigned, including the clerical duties and enforcement. In January 1999, the Executive Director reported that she received authorization from the Department of Personnel to fill the vacant position, and that we would be advertising and taking applications right away.

Filling the Vacant Position. The Executive Director reported on the status of the vacant position, including the reclassification to an Administrative Assistant II. The primary duty would be to investigate complaints (as the Executive Director is currently) and handle all the enforcement matters. For this reason, the Executive Director had selected the "working title" of the position as "Investigator/Administrator." Initial interviews had been conducted, references checked, second interviews for the top two candidates were to be scheduled for the following week, and it was hoped to have the person hired by the end of April.

Computer Programming. The other main priority (in addition to filling the vacancy) for the past year was getting a new computer program in place. Currently, the State's Information Management Services (IMS) (computer) division was working on scheduling the network installation within the next four weeks. If that was not possible, the agency had authorization to go outside the state to hire an installer.

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Fox Visual Pro has been chosen as the computer database program. It's the same system the State Board of Arkansas has and they are sending the program free of charge. IMS will "tweak" the program for the Board's needs and will provide continued technical support as well. The goal is to push them to have it completed by June 30. If that is not possible, we will have the funding to have it completed shortly after that in the next fiscal year. Although Access database was reviewed, it was felt that Fox Pro had greater database capacity.

Also, staff has been attending training in Windows, Word and Access.

Office Equipment. The Executive Director reported on various items that were being purchased for the office: file cabinets, desk accessories, laptop computer, docking bar, etc.

Office Space Lease. Finally the Executive Director reviewed the Board's options for leasing office space: they could renew the current lease at the Apothecary, or they could go out for bids. The consensus was to go through the bid process. Member Hunter agreed to assist the Executive Director in reviewing sites from the bid process.

At this point several members expressed objections regarding the vacant position and the newly aligned duties and received clarification from the Executive Director, as well as copies of the job descriptions as revised.

9. Legislation & Rules Committee

- A. Proposed Legislation 1999 – Bill Update.** The Board received a status update on LB 346 from Dan Vodvarka of the Nebraska Society of CPAs and reviewed a Legislative Bill Watch for 1999. LB 346 was on Final Reading and, with the emergency clause, would be effective when the Governor signed it.

Closed Meeting

Closed meeting. Moved by Hunter, seconded by Kavich, that the Board go into closed session at 2:19 p.m. for the purpose of discussing personnel matters. On roll call vote, all members present voted aye. Motion number 15 carried.

Return to Open meeting. Moved by Hoiekvam, seconded by Hunter, that the Board return to open session at 2:57 p.m. On roll call vote, all members present voted aye. Motion number 16 carried.

After returning to open session, Chair Kathy Smith stated that the Board recommended that the Executive Director not use the term "Investigator" in the title for the vacant position. Regarding other personnel issues, the Board believes that the assigned areas of responsibility are the Executive Director's responsibility and the Board is not in the business of deciding who does

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what in the office. However, the Chair also stated that the Executive Director would be evaluated based on certain actions and on what the Board deems important to be done in the office, including the use of personnel. But the Board will not go into who does what. In response to questions, the Chair and the Executive Director clarified that in terms of hierarchy within the state personnel system, an Administrative Assistant II is a level above the Administrative Assistant I classification; and that salaries for classified personnel, including hiring rates, are established and negotiated by the State and the labor union. Currently, this Administrative Assistant II would begin at \$28,096. The Chair directed the Executive Director to go forward with hiring personnel for the vacant position.

Member David Hunter excused himself at 3:00 p.m. from the remainder of the meeting.

7. Executive Reports

B. Report from Treasurer. The Board reviewed the Fund Summary Report from February 28, 1999.

C. Report from Chairman of Board. The Chairman reported on the Executive Committee telephone conferences of February 16, 1999 and March 11, 1999. Items discussed included applications received for the new position, the interview schedule, status of the computer programming, the Administrator's conference and concerns of the Executive Director, the Legislative hearing for LB 346 and the Board's testimony, access to e-mail/Internet by employees, developing a Technology Plan, renewing/bidding office lease and meeting/motel arrangements for the July meeting in Chadron. The Board also reviewed a letter from State Auditor Kate Witek regarding public meetings.

8. Examination & Licensing Committee

A. Ratification of initial permits to practice issued; certificates issued. Moved by Aldy, with the Committee's recommendation, to ratify the initial permits to practice and certificates issued by examination and reciprocity. On roll call vote, all members present voted aye. Member Hunter was absent. Motion number 17 carried.

B. Review and Approval of 1999 Permit Renewal Applications. Moved by Aldy, with the Committee's recommendation, that the Board approve the proposed 1999 firm permit renewal and office registration application and the biennial active permit renewal application with amendments. On roll call vote, all members present voted aye, except members Smith and Gaines who voted nay. Member Hunter was absent. Motion number 18 carried.

C. Approval of AICPA as Vender for May 1999 CPA Examination. Since the Board does not utilize a contract with the AICPA, it would be prudent to approve the use of the AICPA's

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Uniform CPA exam for the May, 1999 exam. Moved by Aldy, with the Committee's recommendation, to approve the use of the AICPA's Uniform CPA exam for the May, 1999 exam. On roll call vote, all members present voted aye. Member Hunter was absent. Motion number 19 carried.

Member Williams Gaines excused himself at 3:15 p.m. for the remainder of the meeting.

D. Applications to Reinstate Active Permits. Upon review of the Board rules, it was determined that the Board should establish a policy statement regarding interpretation and procedures to be followed when issuing a reinstatement. Moved by Aldy, with the Committee's recommendation, to adopt the following policy statement for reinstatement to Active Permit: 1. Staff will review application, applicant's file and CPE hours submitted. 2. If no derogatory or questionable information is found, then staff can issue and forward to Board for ratification at its next meeting. 3. If any derogatory or questionable information is found, then staff will forward the application to the Board for review and approval. 4. Per Rule, "three calendar years" is defined as the prior three years, January – December, before the date of application. On roll call vote, all members present voted aye. Members Hunter and Gaines were absent. Motion number 20 carried.

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9. Legislation & Rules Committee

B. Proposed Rules – CCR Fees. The Attorney General approved the commission, contingent fee and referral fee rule change and it has been sent to the Governor's office for review. The Board also reviewed a "pick list" of proposed rule changes.

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C. Joint Task Force Update. The Task Force meeting for January 29th was cancelled. The next meeting is scheduled for April 28, 1999.

10. Quality Enhancement Program

A. Failure to Respond to Board Request for Reports. All but one practice unit scheduled for review in 1999 have submitted the appropriate forms/reports. This practice unit was handled in another matter pending before the Board.

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11. New Business

A. Future Meeting Dates. The next regularly scheduled Board meeting is May 20-21, 1999 in Lincoln, Nebraska. Future meeting dates are scheduled for July 19-20, 1999 in Chadron,

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September 16-17, 1999 in Lincoln; and December 2-3, 1999, January 13-14, 2000 and April 20-21, 2000 with locations to be determined.

B. Review of Travel Policies. The Board was given current Board member and Staff Member traveling policies. No action required at this time although members have been asked to keep the policies and bring them back to the May meeting.

C. NASBA. The Board discussed and reviewed various NASBA correspondence: 1) Report on Administrator's Conference, 2) Focus Questions, 3) Nomination for Vice Chair, 4) Bylaws, 5) Committees, 6) Letters from State Boards, and 7) Public Perception Poll. Moved by Kavich, seconded by Klein, that the Board send a letter of recommendation nominating David Vaudt for NASBA Vice Chair subsequent to a phone call to see if he is interested in the position. On roll call vote, all members present voted aye. Members Hunter and Gaines were absent. Motion number 21 carried.

12. Adjournment

It was moved by Aldy, seconded by Kavich, that the Board adjourn at 4:04 p.m. On roll call vote, all members present voted aye. Members Hunter and Gaines were absent. Motion number 22 carried.

Submitted by,

William L. Gaines, Jr., CPA
Secretary